

Applicant : George Q. Daley et al.  
Serial No. : 09/982,223  
Filed : October 18, 2001  
Page : 5 of 6

Attorney's Docket No.: 00108-147001 / WHI 00-18 US

### REMARKS

Claims 1-12, 24-36 and 47 are pending. Claims 1 and 47 have been amended. Claims 13, 16, 17, 23, 27-29, 33, 37-46 and 48-49 have been canceled. No new matter has been added.

The Examiner indicated that the subject matter of claim 46 is allowable. Thus, claim 1 has been amended to incorporate the limitations of claims 45 and 46.

#### ***Rejection of Claims 48 and 49 Under 35 U.S.C. §112, first paragraph***

Claims 48 and 49 are rejected under 35 U.S.C. §112, first paragraph "as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention."

Claims 48 and 49 have been cancelled, thereby obviating this rejection.

#### ***Rejection of Claims 1-13, 16, 17, 23-29, 33-45 and 47-49 Under 35 U.S.C. §112, second paragraph***

Claims 1-13, 16, 17, 23-29, 33-45 and 47-49 are rejected under 35 U.S.C. §112, second paragraph, "as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." In particular, the Examiner asserts that "the term 'rare cutter restriction site' ... is a relative term which renders the claim indefinite."

Applicants respectfully traverse this rejection as the term "rare cutter restriction site" was an art known term at the time the application was filed. However, in the interest of expediting prosecution, the claims have been amended to recite that the restriction site is selected from the group consisting of NotI, SfiI, PacI and P1-SceI, thereby obviating this rejection.

#### ***Rejection of Claims 13, 16, 17, 23, 27 and 28 Under 35 U.S.C. §102(b)***

Claims 13, 16, 17, 23, 27 and 28 are rejected under 35 U.S.C. §102(b) "as being anticipated by Bender."

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Page : 6 of 6

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Claims 13, 16, 17, 23, 27 and 28 have been canceled, thereby obviating this rejection.

***Rejection of Claims 1-5, 7, 11-13, 16, 17 and 23 Under 35 U.S.C. §102(e)***

Claims 1-5, 7, 11-13, 16, 17 and 23 are rejected under 35 U.S.C. §102(e) "as being anticipated by Kingsman."

Claims 13, 16, 17 and 23 have been canceled, thereby obviating this rejection with respect to those claims. The remaining claims, as amended, are directed to a vector that includes a 3' LTR with a rare cutter restriction site selected from NotI, SfiI, PacI and P1-SceI. Kingsman does not teach or suggest a vector having the claimed restriction sites. Therefore, Kingsman does not teach or suggest every element of the claims and thus does not anticipate the invention.

Applicants respectfully request that the Examiner withdraw this rejection.

Enclosed is a check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

  
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